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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-CF-338
	)	
Mortenson Broadcasting Co.	)	NAL/Acct. No. 200232340002
Antenna Structure Registration No. 1020434	)	
South Charleston, WV	)	FRN 0004-1688-29

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** July 9, 2002

By the District Director, Columbia Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Mortenson Broadcasting Co. ("Mortenson") has apparently violated Section 17.51(a) of the Commission's Rules<sup>1</sup> ("Rules") by failing to exhibit obstruction lights on its antenna structure between sunset and sunrise. We conclude that Mortenson is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On May 15, 2002, at approximately 9:20 PM agents from the Commission's Columbia, Maryland office observed that the lights on Mortenson's tower were extinguished.

3. On May 16, 2002, at approximately 9:30 AM one of the agents visited Mortenson's studio of WSCW,<sup>2</sup> and determined that station personnel were unaware of the fact that the tower lights were unlit the previous night. The agent advised Mortenson's WSCW chief engineer and station manager that the station was required to notify the FAA of the unlit tower if not repaired within 30 minutes.

4. On May 23, 2002, the agent contacted the FAA Flight Service Center in Elkins, WV. FAA personnel told the agent that Mortenson made notification of the light outage at 8:14 AM on May 17, 2002.

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<sup>1</sup> 47 C.F.R. § 17.51(a).

<sup>2</sup> Mortenson is the licensee of radio station WSCW in addition to registered owner of the antenna structure.

### III. DISCUSSION

5. Section 17.51(a) of the Rules requires prescribed obstruction lighting be exhibited from sunset to sunrise. Mortenson's antenna structure was observed on May 15, 2002 after sunset with obstruction lighting unlit. Section 17.48 of the Rules<sup>3</sup> requires notification of extinguished lighting to the FAA if not corrected within 30 minutes. FCC agents advised Mortenson personnel of the improper functioning of the tower lighting on the morning of May 16, 2002. Mortenson waited until after another sunset to sunrise period before notifying the FAA of the improper functioning of the lights.

6. Based on the evidence before us, we find that Mortenson willfully<sup>4</sup> violated Section 17.51(a) of the Commission's Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>5</sup>, sets the base forfeiture amount at \$10,000 for failure to comply with prescribed lighting. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"),<sup>6</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>8</sup>, Mortenson Broadcasting Co. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 17.51(a) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mortenson Broadcasting Co. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>3</sup> 47 C.F.R. § 17.48

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, and 0.311.

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9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232340002, and FRN 0004-1688-29

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232340002.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mortenson Broadcasting Co., 3270 Blazer Parkway, Suite 101, Lexington, KY 40509.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin  
District Director  
Columbia Office

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<sup>9</sup> See 47 C.F.R. § 1.1914.